

United States District Court  
Eastern District of California

Jesse Simkins,

Plaintiff,

vs.

No. Civ. S 04-1433 DFL PAN P

Order

Foothill Orthopedic Medical  
Center, et al.,

Defendants.

-oOo-

December 15, 2005, defendants Ingalls (aka Ingles) and Pires moved to compel answers to interrogatories and requests for admissions served September 6, 2005, and for sanctions. Plaintiff did not respond to the discovery, nor to an October 27, 2005, letter. He has not opposed the motion to compel. The motion is granted.

Defendants seek sanctions. This court must apportion expense-shifting sanctions "in a just manner," taking into

1 account the extent to which the opposing party's objections to  
2 discovery were substantially justified. Fed. R. Civ. P.  
3 37(a)(4)(c); see also Reygo Pac. Corp. v. Johnson Pump Co., 680  
4 F.2d 647, 649 (9th Cir. 1982) (expenses ordinarily awarded unless  
5 court finds losing party's position was justified); 7 James Wm.  
6 Moore et al., Moore's Federal Practice para. 37.23[1] (courts  
7 apply rebuttable presumption in favor of imposing expense  
8 shifting sanctions on party against whom motion to compel is  
9 resolved). Plaintiff offers nothing to rebut the presumption of  
10 sanctions. His position, which was to ignore the discovery,  
11 letter and motion, was not substantially justified; it  
12 inconvenienced defendants and the court and will delay reaching  
13 the merits of this action.

14 Counsel seeks compensation for four hours' work in  
15 connection with the matter. The court finds that a fair sanction  
16 is \$450.00, which is two hours' work at \$225 per hour.

17 Accordingly, defendants' December 15, 2005, motion to compel  
18 and for sanctions is granted. Within 20 days, plaintiff shall  
19 respond to defendants' discovery and remit \$450.00 to opposing  
20 counsel.

21 So ordered.

22 Dated: February 7, 2006.

23 /s/ Peter A. Nowinski  
24 PETER A. NOWINSKI  
25 Magistrate Judge  
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